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November 13, 2009

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By U.S. Certified Mail, RRR

Craig Whitenack, Civil Investigator
United States Environmental Protection Agency
Region IX, Southern California Field Office
600 Wilshire Avenue, Suite 1420
Los Angeles, California 90017

Re: Yosemite Creek Superfund Site

Dear Mr. Whitenack,

On behalf of and as outside counsel to Kaiser Aluminum & Chemical Corporation LLC ("KACCLLC"), successor-in-interest to Kaiser Aluminum & Chemical Corporation ("KACC"), I am responding to the October 15, 2009 Request for Information Pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") directed by the United States Environmental Protection Agency ("USEPA") to KACC (the "Request") concerning the above-referenced site (the "Site").

Background

The Bay Area Drums Site

KACCLLC previously received a February 21, 2008 General Notice of Potential Liability (the "Notice") concerning the Site. The Notice explained that an investigation by USEPA identified the former Bay Area Drum facility, located at 1212 Thomas Avenue in San Francisco, California (the "BAD Site") as the source of contamination at the Site.

KACC was identified as a potentially responsible party at the BAD Site in the early 1990s, participated in the PRP group, was assigned a Volumetric Percentage Share of 0.788%, and eventually accepted a De Minimis cash-out settlement offer in March 2001. Documents reflecting these matters are enclosed with this response, in electronic form on a compact disc.

KACC's Bankruptcy and Discharge

On February 12, 2002, KACC, along with several affiliated companies, filed for reorganization under Chapter 11 of the United States Bankruptcy Code. As part of certain restructuring transactions consummated in connection with KACC's plan of reorganization,

KACC was merged into KACCLLC in 2006 and thus KACCLLC is the successor-in-interest to KACC.

The liabilities asserted against KACC concerning the Site were discharged pursuant to the plan of reorganization (the "Plan") applicable to KACC and the February 6, 2006 order of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") confirming the Plan (the "Confirmation Order").¹ Of further note, the injunctions the Bankruptcy Court issued in connection with confirmation of the Plan permanently enjoin all entities from commencing or continuing any action or other proceeding against, *inter alia*, KACC or KACCLLC on account of any claim or liability arising on or before the July 6, 2006 effective date of the Plan (the "Effective Date"). As disclosed in the Notice itself, all of the acts that allegedly caused the contamination at the Site occurred and any claims against KACC relating to the environmental conditions at the Site arose well before the Effective Date.

The Multi-Site Consent Decree and Covenant Not To Sue

Further, USEPA has covenanted not to sue KACC concerning the Site. On August 17, 2003, KACC entered into a multi-site consent decree (the "Consent Decree") with the United States, on behalf of USEPA and certain other federal agencies; certain states, including California; and an American Indian tribe.² The Bankruptcy Court approved the Consent Decree on October 27, 2003. A copy of the Consent Decree is enclosed for your convenience.

The Consent Decree categorizes each site with respect to which KACC has been or could be alleged to be responsible for environmental contamination as either a Liquidated Site, a Discharged Site, a Debtor-Owned Site, a Reserved Site or an Additional Site (as each such term is defined in the Consent Decree). The BAD Site is expressly defined as a Liquidated Site. See Consent Decree at pg. 6, ¶ 1.M. Further, a "Liquidated Site" under the Consent Decree "shall be construed to include (i) for those sites now or hereafter included on the NPL, all areas of a site as defined by EPA for purposes of the NPL, including any later expansion of such site as may be determined by EPA, and any affected natural resources, or (ii) for those sites or portions of sites not included on the NPL, all areas and natural resources affected or potentially affected by the release or threatened release of hazardous substances." Consent Decree at pg. 8, ¶ 1.M. The BAD Site has not been included on the NPL; accordingly, for purposes of the Consent Decree, the BAD Site includes "all areas and natural resources affected or potentially affected by the release or threatened release of hazardous substances." The Notice states that USEPA has determined that the Site has been affected by releases of hazardous substances from the BAD Site; accordingly, the Site is considered part of the BAD Site for purposes of the Consent Decree and thus is a Liquidated Site.

Under the Consent Decree, USEPA, *inter alia*, covenanted not to file a civil action or to take any administrative or other action against KACC pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§9606 or 9607, Section 7003 of RCRA, 42 U.S.C. § 6973, or any similar state laws with respect to each of the Liquidated Sites, including the BAD Site and, for the reasons outlined above, the Site. See CONSENT DECREE at pg. 33, ¶ 18.

¹ The United States District Court for the District of Delaware entered an order affirming the Confirmation Order on May 11, 2006. The Plan became effective on July 6, 2006.

² The United States published notice of the proposed Consent Decree in the Federal Register at 68 Fed. Reg. 51596 (Aug. 27, 2003).

However, KACCLLC, as successor-in-interest to KACC, remains obligated under the Consent Decree to respond to reasonable requests for information under Section 104(e) of CERCLA. Accordingly, KACCLLC respectfully submits this response to the Request, subject to the following objections.

Objections

KACCLLC has made a diligent and good faith effort to respond fully and completely to the Request to the extent it seeks information concerning KACC's involvement in the BAD Site,³ and respectfully sets forth the following objections to protect and preserve its rights.

General Objection No. 1.

As stated above and in the Notice, the source of the contamination affecting the Site is the BAD Site. On the other hand, the Request is not in any way limited to the BAD Site, instead seeking information across a broad spectrum spanning all environmental handling practices at any facility—regardless of where located—operated by KACC, or even which may have had some use of drums or of any chemical which also happens to also be constituent of concern at the Site, which list includes some of the most common chemicals and substances used in industrial operations. Fairly read, the Requests seek to require KACC to describe its entire environmental history from 1940 to the present. The great majority of this information, even if it were possible to compile—it is not—is wholly irrelevant to any issue concerning the Site.

Meanwhile, KACC was founded in 1946 with the lease and eventual purchase of three aluminum facilities from the United States government following World War II. Over the ensuing decades, the company grew to become involved in virtually all aspects of the aluminum industry, including the mining and refining of bauxite into alumina, the production of primary aluminum from alumina, and the manufacture of fabricated and semi-fabricated aluminum products. These operations literally spanned the globe and involved a vast multitude of operations in every part of the United States. At one time KACC was one of the largest industrial companies in the world. While KACC's bankruptcy and attendant restructuring resulted in KACC's sale of its bauxite and alumina operations as well as most of its primary aluminum holdings, KACCLLC still operates 10 facilities across the United States which produce high-quality fabricated aluminum products for major suppliers and manufacturers in the aerospace, general engineering, automotive and custom industrial markets. In light of this history and the breadth of KACC's historic operations and the breadth of the Request, literal compliance with the Request is simply impossible.

Further, even if this information were possible to provide, a request for KACCLLC to do so in light of its bankruptcy, its discharge, and USEPA's covenant not to sue, as well as the fact that the source of the contamination of the Site is the BAD Site—which was been fully investigated already—is inappropriate. In addition, presumably USEPA has all of the information gathered for the BAD Site, and thus already has the information it needs concerning the Site in its possession.

Accordingly, KACCLLC is providing those non-privileged documents in its possession, custody, or reasonable control, subject to these objections, concerning KACC's involvement in the BAD Site. KACCLLC has no documents concerning the Site itself, other than those

³ Other than as successor-in-interest to KACC, KACCLLC has no involvement whatsoever with the BAD Site.

documents concerning the BAD Site. KACCLLC objects to the Request to the extent it seeks additional information as being overly broad, unduly burdensome, and harassing and as exceeding the authority granted to USEPA under Section 104(e) of CERCLA.

General Objection No. 2.

KACCLLC objects to the definitions provided as part of the Request as ambiguous, vague, overbroad, or too indefinite to be capable of reasonable interpretation, and as themselves further making the Request overly broad, unduly burdensome, and harassing.

General Objection No. 3.

KACCLLC objects to the Request to the extent that it purports to require the disclosure of information protected by the attorney-client privilege, the work product privilege, or any other privilege recognized under applicable law.

General Objection No. 4.

KACCLLC objects to the Request to the extent it seeks information previously provided to USEPA, already available to USEPA, or possessed by another governmental agency.

General Objection No. 5.

KACCLLC objects to the Request to the extent that, through the Request, USEPA seeks information not relevant to the purpose stated in the Request and/or CERCLA Section 104(e).

General Objection No. 6.

KACCLLC objects to the Request to the extent that it exceeds the authority granted to USEPA under Section 104(e) of CERCLA.

Responses

Subject to and without waiver of the foregoing objections and its other legal rights, KACCLLC respectfully further responds to the request as follows:

Response to Request No. 1.

Please see the information concerning KACC and KACCLLC in General Objection No. 1, *supra*, and KACC's April 7, 1993 Response to the DTSC's March 9, 1992 information request, a copy of which is enclosed with this response and incorporated here by reference as if set forth in full.

Response to Request Nos. 2 – 23 and 25- 29.

Please see KACC's April 7, 1993 Response to the DTSC's March 9, 1992 information request, a copy of which is enclosed with this response and incorporated here by reference as if set forth in full, as well as the other documents being provided with this response, which also are incorporated here by reference as if set forth in full.

Response to Request No. 24.

The following individuals currently have corporate environmental responsibility for KACCLLC: J. Roger Crawford, Vice President, Health, Safety and Environmental Affairs, and J. W. (Bill) Vinzant, Manager, Corporate Environmental Affairs. Messers Crawford and Vinzant can be contacted through KACCLLC's counsel.

Response to Request No. 30.

Non-privileged documents in KACCLLC's possession, custody, or reasonable control concerning KACC's involvement in the BAD Site are enclosed in electronic form on a compact disc.

Thank you for your attention to and assistance with this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Respectfully submitted,

LEMLE & KELLEHER, LLP

By: 
Tre Fischer

encl.—as stated

cc: John M. Donnan (via electronic mail w/o encl.)
J. Roger Crawford (via electronic mail w/o encl.)
J. W. Vinzant (via electronic mail w/o encl.)

UNSCANNABLE MEDIA

To use the unscannable media document # 2237869
contact the Region IX Superfund Records Center